

Request for fee waiver

Great Rivers requests that the Department waive all fees in connection with this request. FOIA states that information should be furnished free of charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see 43 C.F.R. § 2.19. As demonstrated below, Great Rivers meets the six part test under FOIA for a fee-waiver.

In considering whether the Great Rivers meets the fee-waiver test, it is imperative that the Corps remember that FOIA carries a presumption of disclosure, and that the FOIA fee-waiver amendments of 1986 were designed specifically to facilitate access to government records for non-profit, public interest groups such as Great Rivers without the payment of fees. As stated by one Senator, “agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . .” 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). This waiver provision was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,” in clear reference to requests from journalists, scholars, and, most importantly for our purposes, nonprofit public interest groups. *Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986).

1) Identifiable Operations or Activities of the Government

This request asks explicitly for documents in the control of an executive branch agency, the Department of Defense, so it concerns the operations and activities of the government. 43 C.F.R. § 4130.6-1; see *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity’ is ‘all that FOIA requires’ with regard to this factor.”).

2) Likely to contribute to an understanding of government operations/meaningfully informative in relation to the subject matter of the request

The requested information concerns the Department’s cleanup and rehabilitation of former Army bases, and the potential public health risks. Thus, the requested information will allow Great Rivers and concerned citizens to understand the operations and activities of the federal government in rehabilitation procedures and risks. This information sought is of very high interest to people concerned about effective rehabilitation of former Army properties under CERCLA, FUSRAP, and EPA’s Brownfield program. The public is always well served when it knows how government activities have been conducted. See *Judicial Watch*, 326 F.3d at 1314 (“[T]he American people have as much interest in knowing that key [agency] decisions are free from the taint of conflict of interest as they have in discovering that they are not”).

3) Contribute to the understanding of the public at large as opposed to a narrow segment of people or of the requester

In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. *Carney v. U.S. Dept. of Justice*, 19 F.3d 807 (2d Cir. 1994). Great Rivers need not show how it intends to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.” *Judicial*

Watch, 326 F.3d at 1314. It is sufficient for Great Rivers to show how it distributes information to the public generally. *Id.*

Great Rivers maintains a newsletter with a 1200-person distribution. Additionally, Great Rivers regularly interacts with and shares information with citizens' groups, nonprofits, journalists, and government agencies. Great Rivers intends to distribute this information to concerned citizens near the area and potentially other parties who express an interest.

4) Contribute "significantly" to public understanding of government operations

Concerned citizens wish to know how the Department has rehabilitated the site and whether it poses a public health or environmental risk. The subject matter of the documents requested is critical to providing this type of understanding of government operations to the public.

5) Extent to which disclosure will serve the requester's commercial interest, if any

Great Rivers is a nonprofit environmental organization and has no commercial purposes and therefore will not use the information for commercial purposes.

6) The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest

The public interest is in the health of the environment and local citizens. There is no commercial interest on behalf of the requesters. Therefore, the public interest greatly outweighs the commercial interest.

We trust this letter demonstrates to your satisfaction that the Great Rivers qualifies for a full fee waiver. However, if you determine not to waive fees, we request that you contact us prior to incurring any costs in excess of \$50.

FOIA provides that if portions of a document are exempt from release, the remainder of the document must be segregated and disclosed. 5 U.S.C. § 552(b). Please make available for inspection and copying all non-exempt portions of the documents that we have requested, and we ask that you justify any deletions by reference to specific exemptions allowed under FOIA.

This request is being sent to the FOIA Coordinator for the Department with the understanding that it will be forwarded to any other offices that may also have in their custody any requested records.